

**Original citation:**

Stevens, Dallal E.. (2015) 'Rights, needs or assistance? The role of the UNHCR in refugee protection in the middle east'. International Journal of Human Rights, 20 (2). pp. 264-283.

**Permanent WRAP url:**

<http://wrap.warwick.ac.uk/66929>

**Copyright and reuse:**

The Warwick Research Archive Portal (WRAP) makes this work of researchers of the University of Warwick available open access under the following conditions. Copyright © and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable the material made available in WRAP has been checked for eligibility before being made available.

Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

**Publisher statement:**

"This is an Accepted Manuscript of an article published by Taylor & Francis Group in International Journal of Human Rights on 08/10/2015, available online:

<http://www.tandfonline.com/10.1080/13642987.2015.1079026>

**A note on versions:**

The version presented here may differ from the published version or, version of record, if you wish to cite this item you are advised to consult the publisher's version. Please see the 'permanent WRAP url' above for details on accessing the published version and note that access may require a subscription.

For more information, please contact the WRAP Team at: [publications@warwick.ac.uk](mailto:publications@warwick.ac.uk)

warwick**publications**wrap  
  
highlight your research

<http://wrap.warwick.ac.uk/>

# Rights, Needs or Assistance? The Role of the UNHCR in Refugee Protection in the Middle East

Dr Dallal Stevens\*

*This article examines the meaning of ‘protection’ as applied by the UNHCR in its policy in the Middle East, with particular reference to Jordan and Lebanon. It traces the move by human rights and development agencies to adopt a “rights-based approach” in their activities, and critiques the adoption of such an approach by the UNHCR (and NGOs) in the definition of “(international) protection”. The article then proceeds to explore how this interpretation of protection manifests itself in the context of Iraqi and Syrian flight to neighbouring states. It concludes by arguing that the language of protection continues to be confusing and that a rights-based definition not only does not reflect the reality of assistance on the ground, but may, in fact, impede the willingness of states in the region to support refugees in the long-term.*

**Keywords:** Jordan, Lebanon, Middle East, protection, refugees, rights-based approach, UNHCR

## 1. Introduction

This article focuses on the concept of protection (the norm of protection) as administered by the UNHCR and non-governmental organisations (NGOs) (the norm entrepreneurs) in the context of the Middle East and the recent flight of Iraqis and Syrians to neighbouring Arab states.<sup>1</sup>

From the outset, it is important to clarify the area of concern to this analysis, both in terms of “territory” and “space”, and the actors involved. Generally speaking, the territory of “the Middle East” includes Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, Turkey, UAE and Yemen. Some definitions include Cyprus and Northern Cyprus. For the purposes of this article, the discussion will revolve around the Levant region – that is, Jordan, Lebanon and Syria – in view of the large-scale migration that has recently occurred in these countries. It is also advisable to consider the forum – or space – of protection in the hosting state – that is, camp, informal settlements, rural or urban areas, or family hosts. In the Levant countries, asylum seekers and refugees are to be found in all five, creating a complex scenario for those trying to reach potential beneficiaries of the refugee protection framework. The forum will inevitably result in different outcomes; those in urban settings, for example, will not be assisted in the same way as those residing in camps. Consequently, there is scope for considerable variation in approach. A great deal depends on conditions in the state concerned, as well as the

---

\* Associate Professor, School of Law, University of Warwick, United Kingdom;  
[d.e.stevens@warwick.ac.uk](mailto:d.e.stevens@warwick.ac.uk)

I am grateful to Susan Kneebone for her helpful comments on this article.

context in which asylum and refugee policy functions. As with other parts of the world, the provision of protection in the Middle East is undertaken by a range of actors: states, the United Nations High Commissioner for Refugees (UNHCR), United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) and NGOs. It is worth noting that Middle Eastern countries face a variety of immigration, emigration and displacement issues such that it is impossible and ill-advised to over-generalise about the implications for the region as a whole. Nonetheless, the discussion of protection herein is of wide application due to its normative status.

The majority of countries in the region are not party to the 1951 UN Convention relating to the Status of Refugees/1967 Protocol (the “Refugee Convention”).<sup>2</sup> They are therefore not bound by the Convention’s legal definition of refugee. Rather, the non-party states, as well as some state parties – such as Egypt and Yemen – have handed over responsibility for refugee status determination, often through Memoranda of Understanding, to the UNHCR.<sup>3</sup> They also rely heavily on the UNHCR and partner NGOs to provide protection to asylum seekers and refugees. Israel and Cyprus, by contrast, do undertake refugee status determination. These variations raise interesting questions as to the meaning and content of “protection” provided in the region. Due to the fact that the Refugee Convention is not binding on the non-state parties, one could start by assuming a simple understanding of “protection” as the provision of a place of safety for those forced to leave their country of residence and enter another. While this might conceivably be the view of the state, it ignores the fact of the UNHCR presence and the central and powerful role it plays in both refugee determination and protection provision. To a large extent, the UNHCR has considerable latitude, within its mandate, to orient policy in a direction of its own choosing. It will draw on a range of instruments and initiatives to inform action on the ground, including its own Statute and guidance, as well as any applicable Memorandum, producing, in effect, a multi-dimensional protection regime that includes, *inter alia*, refugee law and policy, human rights, humanitarianism<sup>4</sup> and development approaches.

This article considers the background to the concept of protection before examining how it has been, and is being, conceived by the UNHCR. The discussion addresses one particular aspect of the refugee protection framework: the adoption by the UNHCR in its policy – and indeed by many NGOs working with refugees – of a “rights-based approach” to refugee protection and assistance. It examines whether the language of “rights” in this context has any bearing upon the treatment of Iraqi and Syrian refugees in their host states, the enhancement of protection, or the satisfaction of their needs. It argues that the language of protection as “rights-based” is confusing and not only does not reflect the reality of assistance on the ground, which is oriented towards needs, but may, in fact, impede the willingness of states in the region to support refugees in the long-term.

## **2. The concept of protection**

The question of what is actually being provided to assist the refugee is central to this analysis. While it is clearly important to identify “who” is making provision and “where” that provision is made, as outlined in the Introduction, the main objective for all actors is, ostensibly, to protect refugees. Yet, notwithstanding the ubiquity of the terms “protection” or “refugee protection”, consensus as to the meaning of such

concepts remains, it is contended, somewhat elusive.<sup>5</sup> This, despite the significance of protection and the fact that it is core to the UNHCR's mandate and the Refugee Convention,<sup>6</sup> as well as to the activities of many of the NGOs based in the Middle East. It is therefore crucial to understand what is meant by protection in this context before proceeding. Three aspects of protection will now be addressed: the legal basis for "refugee protection"; the "rights-based approach"; and the link between protection and humanitarianism.<sup>7</sup>

To what, then, does the term "protection" refer? Arthur Helton has posited that:

[w]hen we speak of "protection", we mean *legal* protection. The concept must be associated with entitlements under law and, for effective redress of grievances, mechanisms to vindicate claims in respect of those entitlements. An inquiry, then, into whether a population has "protection" is an examination of the fashion in which the pertinent authorities comply with the entitlements of individuals under international law, and the manner in which these legal precepts are implemented and respected.<sup>8</sup>

Helton was prompted to provide his assessment of the meaning of protection due to the lack of formal definition, despite the norm of protection being so core to the fundamental rationale of refugee law. Though there are 15 usages of the term in the text, the Refugee Convention does not actually define "protection".<sup>9</sup> Perhaps the most important reference to protection is in Article 1A(2)<sup>10</sup> of the Convention. This has long been recognised from the drafting history as having a limited meaning, and refers to 'diplomatic protection' – that is, the protection owed by a state to its citizens abroad.<sup>11</sup> However, such an interpretation is no longer considered appropriate for contemporary refugee law. Rather, as Zimmerman and Mahler suggest, Article 1A(2) should be understood to mean that in order for a person not to qualify as a refugee, the home state must be able and willing to ensure that he or she is not exposed to persecution.<sup>12</sup>

### ***A. Standards of Protection***

The contemporary understanding of the term "protection" in the context of the Convention now extends beyond the failings of the home state and is frequently used in an additional sense: to describe the standards to which the refugee is legally entitled in the country of refuge. More usually, such protection is referred to as "rights", and while a number of the Convention's Articles talk of rights,<sup>13</sup> it is usual to include human rights obligations arising under other instruments. As Helton notes, the 'concept of "protection" ... can be taken to mean the act of respecting and upholding fundamental human rights, such as the core rights declared in the Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights'.<sup>14</sup> There is an implicit assumption that the State Parties, and any other actor interested in refugee issues, understands what refugee protection means – namely, the rights and obligations set out in the Convention and in other human rights agreements are constitutive of refugee protection. This is certainly a useful starting point, but the nature of protection provided to refugees is often context-driven. For example, it is well recognised that "protection needs" may vary in cases of mass influx, as distinct from individualised persecution, or generalised violence and armed conflict; and they may be dependent on who the protector is or where that protection is being provided.<sup>15</sup> In addition, over time, the terminology changes: for example, ExCom

Conclusion 22 (1981) refers to ‘measures of protection’ being on the one hand, ‘admission and *non-refoulement*’ and on the other, ‘treatment’ in accordance with ‘minimum basic human standards’, which it lists;<sup>16</sup> ExCom Conclusion 52 (1988), by contrast, mentions ‘protection’ *and* ‘a basic standard of treatment’, almost as if they were separate.<sup>17</sup> With such a range of parameters, uniformity and consistency are not possible and compromise is often an accepted part of the process.<sup>18</sup>

In contrast to the Refugee Convention, which binds state parties, “international protection” was described in some detail in Paragraph Eight of the Statute of the UNHCR. There, we are told that the High Commissioner would provide for the protection of refugees falling under the competence of his office by undertaking a number of activities, such as promoting the conclusion and ratification of international conventions for the protection of refugees; promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees; and promoting the admission of refugees. Naturally, this definition was a product of the negotiations at the time. The list in Paragraph Eight arguably does not conform to the present view of all aspects to protection; nor does it take account of the changes in the UNHCR’s own thinking about protection in the decades following the Statute coming into force. Significantly, the agency was accorded a humanitarian role and the position of the United States, which would have limited the concept of protection to “legal protection”, did not triumph.<sup>19</sup> As with meaning of ‘protection’ under the Refugee Convention, ‘international’ protection has been subject to interpretation and debate.

### ***B. The UNHCR and the concept of “protection”***

Within a decade of its founding, the UNHCR had developed its role as an operational agency and was increasingly organizing relief efforts.<sup>20</sup> Crucial to this expanding role was the emergent support from the United States in recognition of the enduring need for an effective body able to provide relief and assistance to refugees on a global scale. At the same time, the High Commissioner utilised his “good offices” to adopt a more flexible approach to those in need of assistance when encouraged to do so by the international community.<sup>21</sup> As the years passed, the UNHCR continued to develop its capacities in response to the various causes of mass flight as well as to global politics.<sup>22</sup> Two notable features of its development are the widening competence and transformation ‘from a refugee organization into a more broadly-based humanitarian agency’.<sup>23</sup> Thus, it has expanded its mandate and assumed responsibility for millions of displaced people in addition to refugees (namely, stateless people, the internally displaced and victims of natural disasters). Laura Barnett has suggested that the UNHCR has ‘shifted towards an operational approach, fostering local civil society, building democratic governance, and working for conflict prevention’.<sup>24</sup> Such dramatic organisational change is particularly relevant to the Middle East where the UNHCR has a very high profile and potentially influential role. But it does not come without criticism.<sup>25</sup>

The 1994 Note on International Protection is particularly helpful in revealing how the UNHCR perceived the broadening of its mandate and the shift towards humanitarianism, particularly insofar as protection is concerned. It explains that the UNHCR has:

adopted the usage of regional instruments such as the OAU Refugee Convention and the Cartagena Declaration, using the term “refugee” in the broader sense, to denote persons outside their countries who are in need of international protection because of a serious threat to their life, liberty or security of person in their country of origin as a result of persecution or armed conflict, or serious public disorder.<sup>26</sup>

This reference to armed conflict is pertinent to many of the forced displacements that have occurred in the Middle East in recent times and allows for a generous approach to be adopted.<sup>27</sup> In addition, the Note provides a description of “international protection” that moves us beyond the formulation of Paragraph Eight of the Statute, which tells us simply what the UNHCR will do to ‘provide for protection’ without defining “protection” itself. Most notable is the cross reference in the Note to the Preamble of the 1951 Refugee Convention: the overall objective of international protection is stated as being the assurance of the widest possible exercise of fundamental rights and freedoms, which all human beings should enjoy without discrimination.<sup>28</sup> ‘International protection is thus premised on human rights principles’<sup>29</sup> and it is interesting to note the change from “treatment” and “basic human [or humanitarian] standards” of earlier ExCom Conclusions.<sup>30</sup> According to the Note, it:

begins with securing admission, asylum, and respect for basic human rights, including the principle of *non-refoulement*, without which the safety and even survival of the refugee is in jeopardy; it ends only with the attainment of a durable solution, ideally through the restoration of protection by the refugee’s own country.<sup>31</sup>

Significantly, the Note moves beyond the fulfilment of rights to an acceptance that international protection must also address the issue of “needs” more directly: protection, it claims, ‘involves seeking ... to meet the whole range of needs that result from the absence of national protection’.<sup>32</sup> ‘Material assistance’, it suggests, ‘is often essential for refugees’ survival’ and is therefore often ‘a *sine qua non* of international protection’.<sup>33</sup> But what are such *needs*? While there appears to be a correlation between *rights* and *needs*,<sup>34</sup> there is also recognition that ‘the refugee ... [must] have some means of subsistence, as well as shelter, health care and other basic necessities’, suggesting a closer alignment between welfare and needs.<sup>35</sup> This adoption of the language of “needs” may seem unsurprising to some since the Statute stresses that the work of the High Commissioner is “humanitarian and social”, indicative of a welfare orientation, but the point is that it does not define either “protection” or what it means to be “humanitarian and social”. The Note removes any uncertainty by clearly stating that the UNHCR perceives protection as being about addressing the needs of the (broadly defined) refugee as well as assisting him or her to fulfil their basic rights. To repeat: ‘Since material assistance is often essential for refugees’ survival, it can also be a *sine qua non* of international protection’.<sup>36</sup>

### ***C. Evolving UNHCR approaches to “protection”***

By 1999, however, there appears once more to be a subtle change in UNHCR definitions of “international protection”. For example, in the field guide for NGOs, *Protecting Refugees*, a much reduced definition is employed. It states simply that:

Since, by definition, the basic rights of refugees are no longer protected by the governments of their home countries, the international community then assumes the responsibility of ensuring that those basic rights are respected. The phrase “international protection” covers the gamut of activities through which refugees’ rights are secured.<sup>37</sup>

No explicit mention here, then, of *needs*; rather, the focus is clearly on *rights*. Furthermore, the broad-based nature of the statement is striking: any action that secures rights is deemed protection. Perhaps in recognition of the lack of specificity in the words “gamut of activities”, the materials of the *Reach Out Refugee Protection Training Project* (an initiative between NGOs, Red Cross/Red Crescent and the UNHCR to train humanitarian staff in the basic elements of refugee protection) provide the following UNHCR “working definition” of protection that strives to be both comprehensible and comprehensive:

Protection encompasses all activities aimed at ensuring the enjoyment, on equal terms of the rights of women, men, girls and boys of concern to the UNHCR in accordance with the letter and spirit of the relevant bodies of law (international, humanitarian, human rights and refugee law). It includes interventions by States or UNHCR on behalf of asylum-seekers and refugees to ensure that their rights, security, and welfare are recognized and safeguarded in accordance with international standards. Such interventions will, amongst others, be deemed to: ensuring [*sic*] respect for the principle of *non-refoulement*; promoting admission to safety and access to fair procedures for the determination of refugee status; upholding humane standards of treatment; realizing the right to assistance and services; promoting non-discrimination, and the implementation of durable solutions.<sup>38</sup>

Once more, we find here a re-articulation by the UNHCR of its protection function in a manner that seeks to combine rights, process, welfare and the quest for durable solutions. While this description seems comprehensive and reflective of the UNHCR’s multidimensional approach to protection, the humanitarian role – in the sense of addressing immediate suffering – is only met by the “right to assistance and services” and the safeguarding of “welfare”. In many ways, the definition reveals the difficulties faced by the UNHCR in establishing a policy that is not only “working” but “workable”. Consequently, the urge to define and redefine continues.

A recent description of protection, as seen through the eyes of the UNHCR’s Director of International Protection, Volker Türk, provides useful insight into the UNHCR’s current thinking about its role and the meaning of protection in the 21<sup>st</sup> century. And, here, again, it is important to quote a significant portion of the statement *vis-à-vis* protection:

[P]rotection... means that refugees, the stateless, IDPs, and other persons of concern are able to enjoy the widest possible array of human rights and fundamental freedoms without discrimination. This focus must permeate all our interactions with persons of concern. It must also provide the overall strategic direction to our operations and inspire the design, coordination and delivery of services. A rights-based approach is ... inherent to UNHCR’s protection mandate.

... it means delivering concrete, quality protection services ... . It also means advocating for and intervening on behalf of refugees and other persons of concern when they are at risk . ... and] it means integrating protection considerations into every service we deliver (mainstreaming protection).

Protection activities and approaches are anchored in international norms and standards and yet must be delivered with a deep awareness of circumstances and contexts in which we work. The time has perhaps come to reframe protection as a broader governance issue.<sup>39</sup>

There are a number of points that are worth highlighting here: (1) the focus on the rights and freedoms of refugees and the emphasis on a “rights-based approach” as being core to UNHCR’s protection mandate (this is the expanded mandate and includes all persons of concern to the UNHCR); (2) the use of the first-person personal pronoun in the statement is interesting; this is about UNHCR’s conceptualisation of the protection it offers rather than a clarification of the meaning of protection for other organisations or even states; (3) the suggestion by Türk that protection should be reframed as governance (though he does not explain in detail his understanding of “governance” here or the implications of such reframing). Clearly, “protection” is expected to achieve much and the UNHCR is prepared, through these stated objectives, to shoulder enormous obligations and responsibility for refugees beyond its earlier competences of both legal protection and its express humanitarian role.

This article will now focus on the first issue underlined above: the emergence of what might be referred to as the norm of a “rights-based approach” in the discourse of humanitarian organisations, especially in the context of development and humanitarianism. It will then explore the application of this norm by the UNHCR in its delivery of protection in Jordan and Lebanon.

### **3. A rights-based approach**

This section opens by outlining the background to the “rights-based approach” movement before moving on to examine how the UNHCR has adopted and applied the framework.

That a rights-based approach is a “good thing” might seem incontrovertible, but since its precise meaning and scope are not so clear-cut, due in part to the way that it is understood in different ways in different contexts, it is, arguably, a contested and contestable concept, requiring further exploration. Some important questions that need addressing but are often ignored include the following: why was the rights-based approach adopted? Is it simply rhetoric or an effective practical tool in the armoury of NGOs and human rights organisations? And, crucially for this article, what does it add to refugee protection? At a fundamental level, it is always advisable that there is clarity about key concepts or norms, particularly when those concepts have an effect in regions such as the Middle East where the UNHCR plays a major role as a norm entrepreneur. As Volker Türk rightly noted recently, ‘[i]t is ... critical to delineate, realistically, in each context what protection in humanitarian settings can and must do, being clear about its potential, as well as its limitations’.<sup>40</sup>



The concept, or norm, of a human rights-based approach emerged as a fundamental feature of development and humanitarian programmes in the 1990s, particularly following UN reforms in 1997.<sup>41</sup> In 2003, the then UN Secretary-General, Kofi Annan, invited all UN agencies to ‘mainstream human rights into their activities and programmes within the framework of their respective mandates’.<sup>42</sup> In an influential Statement of Common Understanding, three strands to the human rights-based approach were identified: (1) all programmes of development cooperation should further the realisation of international human rights; (2) be guided by the standards and principles of international human rights law; and (3) programmes of development cooperation should contribute to the capacity of duty-bearers to meet their obligations and of rights-holders to claim their rights.<sup>43</sup>

As can be seen, the statement made specific reference to *development* co-operation and *development* programming by United Nations agencies. It is therefore unsurprising that those working in development heeded Annan’s call with enthusiasm, and that it is therefore in that context that we have seen the greatest adoption of the rights-based approach. Notwithstanding this apparent attempt at agreement, what the adoption of such an approach by agencies actually means in practice is not altogether certain. Arguably, the concept itself remains somewhat elusive due to the tendency for organisations to adopt alternative interpretations of a rights-based approach. As one commentator puts it, ‘Agencies and organizations have often improvised in defining for themselves what constitutes a rights based approach.’<sup>44</sup> What adds to the confusion is that organisations do not simply draw upon human rights norms but also utilise other concepts from a range of disciplines – for example, ethics, good governance, development and social justice.<sup>45</sup> Thus, the outlining of basic principles, whilst important, is perhaps the easiest endeavour but it can only provide a general framework, that remains subject to frequent and further interpretation.

In the quest for consensus and clarification, reference is frequently made to a publication of The Office of the High Commissioner for Human Rights (OHCHR) entitled ‘Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation’. There, it is stated that ‘[a] human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.’<sup>46</sup> It continues: ‘Mere charity is not enough from a human rights perspective.’<sup>47</sup> That human rights and development are connected is deemed fairly obvious.<sup>48</sup> ‘[C]lose enough in motivation and concern to be compatible and congruous ... different enough in strategy and design to supplement each other fruitfully’.<sup>49</sup> They both seek to secure the freedom, well-being and inherent dignity and equality of all people.<sup>50</sup>

For its part, the Danish Institute of Human Rights (DIHR), in its ‘inspirational’ guide entitled *Applying a Rights-based Approach* aimed at civil society organisations working in the development context, identified four basic principles underpinning a rights-based approach:

- inalienability, indivisibility and interdependence of human rights;
- empowerment and participation;
- equality and non-discrimination;
- accountability.<sup>51</sup>

The origin of these four principles is obvious: they are derived from the UN Statement of Common Understanding set out above, which carefully listed the human rights principles that should guide all phases of an organisation's programming process: *universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law*.<sup>52</sup> In recognition of the difficulty of translating principles or values into practice, and to assist rights-based approach programming efforts, the DIHR identifies four further 'focus areas':

- 'the most vulnerable groups, including issues of gender discrimination';
- 'the root causes of poverty, deprivation and human rights violations';
- 'the relationship between rights-holders and duty-bearers'; and
- 'empowerment'.<sup>53</sup>

The Danish guide also emphasises the importance of the rights-holder and the duty-bearer – unsurprising, as these, too, are highlighted in the third principle of the Common Understanding. Fundamental to the approach, then, is that 'every human being is a rights-holder and that every human right has a corresponding duty-bearer'.<sup>54</sup> The rights-holder – in our context, the asylum seeker or refugee – is entitled to rights, and to claim them; the rights-holder 'is entitled to hold the duty-bearer accountable' but also 'has a responsibility to respect the rights of others'.<sup>55</sup>

A third articulation of a rights-based approach is also worth mentioning; it, too, shows how the principles of the Common Understanding, as well as subsequent agency definitions, have been adopted and translated into an aide-memoire: namely, PANEL, an acronym for 'participation, accountability, non-discrimination and equality, empowerment and legality'. This particular formulation has found favour with a number of organisations in the UK and Australia.<sup>56</sup>

While these examples show the manner in which the key points of a rights-based approach are underscored by different bodies, it is also striking how NGOs interpret statements of principle in their own way. The DIHR's list, for example, omits certain (significant) terms from the Common Understanding, such as interrelatedness, inclusion and the rule of law. Often, in the quest to fashion a set of norms and principles that are perceived as being comprehensible as well as workable by those working for NGOs, there is a tendency for definitions to become overly reductive. The danger, then, is that either the definition descends into a meaningless mantra or is too general and consequently subject to interpretation and reinterpretation. Clearly this can have significant consequences for agency activity on the ground and the translation of the conceptual to the practical.

#### **4. The UNHCR and a rights-based approach**

As indicated, the rights-based initiatives of the 1990s and 2000s have been actively pursued by UN organisations, NGOs and donor governments, particularly with regard to development programming. It is also apparent that humanitarian and human rights organisations – as opposed to development organisations – have adopted the rights-based terminology when outlining their mandates. This is certainly true of the UNHCR. References to the "rights-based approach" pervade the UNHCR's

documentation relating to refugees and other persons of concern, but pinning down its meaning as understood by the agency is not so straightforward. Even the NGO training handouts produced by the organisation admit to the confusion between humanitarian assistance and development approaches.<sup>57</sup> One explanation provided by the *Handbook for the Protection of Internally Displaced Persons* states upfront that ‘protection is about securing human rights (a rights-based approach)’.<sup>58</sup> The *Handbook* proceeds to define a rights-based approach in a way that parallels earlier development definitions, though specific reference is not made to the DIHR’s or other guides:

A rights-based approach means that all of our policies, programmes and activities:

- are based on rights, as provided in international law;
- further the realization of rights; and
- seek to strengthen the capacities of rights holders (women, men, girls and boys) to claim their rights, and the capacities of duty bearers (states and other authorities) to meet their obligations to respect, protect and fulfil those rights.<sup>59</sup>

Although this description relates to the context of IDPs, its generality arguably permits wider application. In fact, Volker Türk talks about the promotion of ‘accountability, equality and empowerment in [UNHCR’s] operations’ in his 2013 statement on international protection,<sup>60</sup> which is of direct concern to refugees as well as other persons of concern to the UNHCR; the *Handbook’s* definition quoted above also imposes obligations on UNHCR and its employees, while importantly placing the responsibility to respect, protect and fulfil rights squarely at the door of the State ‘and other authorities’. The UNHCR defines its role as improving ‘capacity’ - whether it be of rights-holders or duty-bearers;<sup>61</sup> it is unclear whether it also considers itself a duty-bearer, in view of the scale of its operations and its impact on the individual seeking international protection.<sup>62</sup> Nonetheless, this approach allows the rights agenda to be brought into play in the protection of refugees, even where, as in the Middle East, the majority of countries have not actively signed up to the Refugee Convention and the obligations (rights) contained therein.

When we turn to a second document, *A Community-Based Approach in UNHCR Operations*, a new policy enters the arena: as the title declares, ‘a community-based approach’.<sup>63</sup> The Director of International Protection cites the initiative favourably, noting that the UNHCR will focus on community-based protection to advance its work with the communities it serves.<sup>64</sup> ‘A community-based approach’, declares the document ‘is a way of working in partnership with persons of concern during all stages of UNHCR’s programme cycle. It recognizes the resilience, capacities, skills and resources of persons of concern, builds on these to deliver protection and solutions, and supports the community’s own goals.’<sup>65</sup> While it stresses that ‘a community-based approach is integral to a rights-based approach, as they are founded on common principles and goals’,<sup>66</sup> its distinctiveness is not necessarily clear. What more does it add, then, to the principles of participation and empowering individuals and communities to promote change and adherence to rights, principles recognised as foundational to a rights-based approach?<sup>67</sup>

It is noticeable that the text of *A Community-Based Approach* sets out to contrast a ‘needs-based approach’ from a ‘rights-based approach’, emphasising that persons of

concern should no longer be viewed as beneficiaries of aid but as holders of rights with their own legal entitlements.<sup>68</sup> There is a new emphasis on the participatory role of the individual within his or her community, as well as, it seems ‘an age, gender and diversity approach’.<sup>69</sup> Yet, confusingly, “needs” have not disappeared altogether – ‘[l]ike all development,’ suggests the DIHR, ‘[a rights-based approach] implies an effort to improve the situation of people, focusing on their needs, problems and potentials’.<sup>70</sup> ‘People are at the very centre of what we do’, the UNHCR Director of International Protection informs us. ‘To be effective, we need to understand their particular needs, not as homogeneous groups, but as individuals with specific backgrounds, aspirations and hopes.’<sup>71</sup>

It is very clear, then, that the UNHCR has adopted and developed a range of different approaches and concepts in fulfilment of its perceived role, and continues to do so. At times, these reveal a confusion of identity by the organisation as it grapples with complex situations and strives to be more solution-oriented; at others, it is clear that it is acting as a norm entrepreneur, seeking to encourage new ways of thinking. Change may be necessary, especially in the current climate of protracted displacement, limited options for displaced people, and a worrying lack of international solidarity, but the theoretical underpinnings or motivations of an organisation as important and influential as the UNHCR should always be scrutinised. The article will now consider how these various approaches to protection translate into practice in those Middle Eastern countries that have faced major refugee influxes in the past decade.

## **5. The language of protection in the Middle East: from needs, to rights, to community?**

The “rights-based approach” remains a focus around which other campaigns and initiatives revolve. It is imperative, consequently, to question whether such an approach makes a real difference to the refugee. One criticism that can be applied to those working in development, humanitarian assistance and human rights is that the linkage between the rights-based approach and programmatic work or activities on the ground is not always transparent.<sup>72</sup> Secondly, the emphasis on developing the capacity of rights-holders to claim rights against duty-bearers fails to recognise that this is not always feasible in every circumstance. Indeed, one can question the extent to which the UNHCR is genuinely inviting refugees to hold it to account when it has failed to meet its own or wider human rights standards. This is not to suggest that promoting rights is unimportant but the whole mission can be undermined by a failure to articulate unambiguously a uniform set of procedural and substantive principles, based in law, that are meaningful, implementable and that make a real difference to the ‘rights-holder’. Such concerns are very much in evidence in the Middle East.

If we take by way of example the Regional Response Plan (RRP) which was developed in relation to Syrian refugees, we find how a rights-based approach is translating into practice. The first Syria Regional Response Plan was published in March 2012 and was a strategic framework document prepared by the UNHCR ‘to address the needs for protection and assistance of refugees fleeing from the Syrian Arab Republic into Jordan, Lebanon, Turkey and Iraq’.<sup>73</sup> The latest Regional Response Plan, RRP6, is described as one of the largest appeals presented for a refugee emergency, comprising 100 partners, including the UNHCR, who work together to deal with the crisis in the region.<sup>74</sup> António Guterres, UN High

Commissioner for Refugees, describes how the RRP6 is based on ‘a shared analysis of regional developments with partners in the Syria Humanitarian Assistance Response Plan (SHARP)’ and recognises that due to ‘the scope and magnitude of the crisis, the humanitarian response must be closely aligned with development actions’.<sup>75</sup> The combination of humanitarianism and development is significant here and makes the region particularly apposite when considering the application of a rights-based approach by refugee-support NGOs and the UNHCR and the nature of protection.

The first four RRP6s (all in 2012) each identify three regional strategic objectives: (1) ‘Ensure that Syrians and other refugees and asylum-seekers fleeing from the Syrian Arab Republic have access to neighbouring territories in order to seek asylum and received protection, including protection from *refoulement*’; (2) ‘Ensure that the basic needs of Syrians and other refugees fleeing from Syria are met with special attention to the most vulnerable’; (3) ‘Undertake contingency measures for a potential mass influx’. The most recent plan, RRP6, published in December 2013, has in view of the longevity of the displacement, a somewhat altered focus. It rightly states that protection is its core objective; initially, in the ‘Key Elements’, there is no detailed explanation of the meaning ascribed to “protection”. Rather, the document describes refugee protection within the context of the Syrian refugee crisis as focusing on:

five priority *objectives*: access to territory and registration, prevention and response to Sexual and Gender-Based Violence, Child Protection – including strategic links between SGBV, Child Protection and Education – meaningful community participation and durable solutions (emphasis added).<sup>76</sup>

Clearly, those who have faced sexual or gender-based violence, and children, have been identified as the most vulnerable groups in need of protection. This focus on vulnerable groups can be traced to earlier explications of a rights-based approach, such as that of the DIHR discussed above.<sup>77</sup> Access and registration are also important, as is the involvement of the community (though whether host or refugee community or both is not outlined) and the quest for durable solutions. While there is no mention in ‘Key Elements’ of the *non-refoulement* obligation – this is perhaps deemed obvious –, protection from *refoulement* is specifically mentioned elsewhere in the document in a section headed ‘Protection’.<sup>78</sup> A ‘fundamental tenet of protection’, we are told, ‘is that refugees should be able to secure entry to safe territory’, and that ‘the key protection response remains preservation of access for those fleeing conflict, and protection from *refoulement*’.<sup>79</sup> This is arguably the most comprehensible and apposite description – access to a place of safety and freedom from return – but, again, it does not tell us what “protection” actually *is*.

It is very evident therefore, that RRP6 is a document addressing the immediate humanitarian *needs* of refugees and it includes protection as a component of such needs alongside essential services, food, health, education and material assistance to the most vulnerable.<sup>80</sup> In light of the discussion above, in which it was shown how both the UNHCR (and many NGOs) endorsed a move away from a needs approach to a rights-based approach, and how a rights-based approach is perceived as fundamental to protection and the delivery of humanitarian assistance, it seems somewhat odd, and arguably confusing, that humanitarian needs receive such emphasis in RRP6, particularly considering the identification of protection as a humanitarian need. There are a number of explanations for this: the length and severity of the crisis has led to a

reassessment of provision and priorities, with a complete rewrite of the RRP objectives; an important aspect of RRP6 is seen as the strengthening of local service delivery and resilience;<sup>81</sup> and organisations on the ground are beginning to have an eye to the future and are hoping to complement longer-term strategies for development in their handling of current displacement issues.<sup>82</sup> Indeed, it is very evident that Syrian displacement is regarded as having moved into what might be termed “the development phase”. It is also true that civil society and NGOs working in the development field have seized upon a certain perspective of the rights-based approach – that is, its ability to regard the deprivation of needs as the denial of rights. Whatever the reason for the shift away from rights-speak and greater acknowledgement of refugees’ needs, it should be welcomed as a more honest reflection of daily, monthly and yearly realities.

## **6. The reality of “protection”**

The Regional Response Plans, NGO and academic reports of the past three years on the Syrian flight make grim reading.<sup>83</sup> Formerly, the migration of Iraqis across borders following hostilities between the US and Iraq also raised serious concerns about the treatment of Iraqis in neighbouring countries, such as Jordan, Syria and Lebanon.<sup>84</sup> It is discernible from both these displacement events, and from the earlier discussion, that there is no single, uniform response that can be labelled “protection”. Rather, “protection” is a fluid concept with a tempo-spatial and human dimension – that is, what constitutes protection will be dependent on time, geography and personal circumstances. The nature of protection will differ in the short term (say, 0-2 years), the mid-term (say, 2-5 years), and the long-term (5+ years). Likewise, spatial factors, such as region, country, urban or rural setting, family or local host, or camp, will also have a significant bearing on the type of protection. Circumstances of both the displaced and the population of the hosting state will influence decisions about service delivery and support. And, perhaps most crucially, who is seen as the lead protection provider – state or UNHCR – will have a huge bearing. If “protection” is to be all-encompassing, delivery will be rare, and failure frequent.

If we take, then, a basic – yet fundamental – interpretation of protection as access to safe territory and freedom from *refoulement*, the record can be deemed generally good. This is so despite the fact that none of the countries under consideration in this piece are signatories to the Refugee Convention and may not even perceive those forced to seek asylum in their territory as legal refugees. The Arab states and Turkey have tended towards an open-door policy towards refugees in the region. The vast majority of Syrians, and other non-Syrians, have therefore succeeded in exercising their right to leave Syria and have entered another, neighbouring state. However, as might be anticipated, the picture is somewhat more nuanced. Asylum seekers and refugees are covered by the constitutional laws of Jordan and Lebanon, and by their immigration laws.<sup>85</sup> A Memorandum of Understanding handles the relationship between the UNHCR and each of the countries *vis-à-vis* refugees. The situation is therefore much more precarious and subject to change, as evidenced by the treatment of Palestinians.

In Jordan, Palestinian refugees from Syria are not registered with UNHCR, as they are deemed to be under the auspices of UNRWA and, since January 2013, they have been denied entry to Jordan, largely for political reasons.<sup>86</sup> In the case of Lebanon, similar

concerns of the Government have resulted in the withdrawal of the open door policy for Palestinians. Prevented from entering, there is little alternative but for these refugees to return to Syria placing them at risk of harm.<sup>87</sup> Palestinians who have succeeded in gaining access to Lebanon are not being registered.<sup>88</sup> For both Jordan and Lebanon, there are a number of reports of removals and deportations though, as far as is known, the numbers are relatively low in view of the millions that have now fled Syria. Obviously, as the UNHCR is not in charge of border controls, it can only use its negotiating power to dissuade states from adopting restrictive entry practices, if and when this occurs.

Similarly to the Syrians, Iraqis crossing the border into Jordan and Lebanon following the Gulf Wars tended to be labelled “guests” and were handled under the residency laws and bilateral agreements between neighbouring countries. In Jordan, this did not prevent their entry at first, but post-2005 and the bombing of three hotels in Amman, the capital, a visa regime was instituted which complicated the situation for Iraqis. There were reports of some deportations, but numbers have again been low. With promises by the Government not to remove over-stayers alongside King Abdullah’s General Pardon Law in June 2011, most Iraqis in Jordan, while faced with difficult circumstances, were generally “safe” insofar as access to territory, permission to remain and freedom from *refoulement* are concerned.<sup>89</sup>

However, the notion of a “safe haven” comprises more than simple access to territory. What happens in the place of safety also matters. And here the facts are more complex. What might be regarded as “safe” one day, may be less so another. Thus, in an emergency situation, in the case of a mass influx of people, the priority is to address the immediate basic needs of shelter, food, water, medical aid and sanitation, for without these, life may be at risk. As time passes, the idea of what it is to be “safe” often alters with the changing circumstances – the immediate needs may be essentially resolved, but other concerns arise.

Iraqis who fled after the second Gulf War were not housed in camps, many choosing to use their own resources in the first instance, before their finances were depleted. While their circumstances were undoubtedly very difficult, and many studies at the time drew attention to, *inter alia*, the lack of education, health care, and employment, as well as the constrained living conditions, the situation was not as dire as that faced by Syrian refugees. Broadly, Iraqis were “safe” in the sense that the vast majority in Jordan did not face life-threatening circumstances, and, as time passed, some conditions improved, such as access to education and health care.

Syrians, in contrast to their Iraqi counterparts, tend not to be as wealthy or educated, and have left their homes with very few possessions. In Jordan, they might be accommodated in camps, or may make their way to towns or villages. With close family connections between the two countries, many are hosted by friends or family. In Lebanon, there are no official camps, due to the prohibition policy of the Government. Syrians are therefore renting privately, staying with Lebanese hosts, living in unfinished buildings or informal shanty and camp-like settlements, or have made their way into UNRWA’s camps for Palestinian refugees. Each of these places of residence raises concerns. The refugee camps in Jordan, such as Za’atari, have faced considerable problems – especially in the early days – with reports of violence, riots, and rape.<sup>90</sup> A report by UNHCR and International Relief and Development

found 50% of refugee dwellings to be inadequate, and as 80% of refugees live outside the camps, this is of great concern.<sup>91</sup> Conditions for refugees in Lebanon are also difficult, with refugees now comprising more than 25% of the Lebanese population.<sup>92</sup> Some have been attacked, with their makeshift homes destroyed;<sup>93</sup> many face terrible circumstances especially in the winter months.<sup>94</sup> The failure of much promised donor money to materialise has only exacerbated the situation with UNHCR having to withdraw support for many families and assist only those determined to be priority cases.<sup>95</sup>

Both countries ostensibly do not permit employment without a work permit but the reality is that such permits are rarely issued and refugees are working illegally. This was the position for Iraqis and has not changed for Syrians. There are potentially serious consequences – fines, imprisonment, deportation – and while there appears to be tacit acceptance of the *status quo* by both governments, and enforcement is rare, a sense of fear and uncertainty is created amongst refugees, as well as resentment within the indigenous population which can be undercut by the low wages that refugees are willing to accept. History is also repeating itself in the report of rising negative coping strategies, such as child labour, early marriage<sup>96</sup> and increased survival sex work,<sup>97</sup> and an increase in domestic violence in the face of the considerable social and economic pressures of displacement.<sup>98</sup> Thus, while there is protection from the risk of persecution or serious harm in Syria, for growing numbers of the Syrian displaced, there is a lack of safety in the country of asylum.

This section has only touched on the very many issues confronted by the UNHCR and partner NGOs as they struggle to deal with the enormous refugee crisis in the Middle East. In this brief discussion, I have sought to show that what is arguably a simplistic rhetoric of protection and rights rarely translates directly to the field. There is no ‘one size fits all’ concept or interpretation. In the early days of a refugee influx, the UNHCR, humanitarian and aid organisations are fire-fighting, desperately trying to deal with the basic necessities for survival. Does the rights discourse have much bearing at this stage? Arguably not, other than as a reminder that the delivery of assistance by norm entrepreneurs should have the individual at its centre, that is, his or her human dignity should be paramount.<sup>99</sup> As an emergency slowly develops into protracted displacement, the needs of the refugees may alter but they continue to be important. Are they encouraged to see themselves as rights-holders who can enforce against the duty-bearer? Are they empowered participants in their futures? Is this realistic or appropriate in the Middle East? It is perhaps in recognition of this that the UNHCR started to talk about realising and maintaining “protection space”, a euphemism, I would suggest, for encouraging states – in this case non-signatory states – not to *refouler* and to respect the rights of asylum seekers and refugees, by talking, rather, in the language of needs.<sup>100</sup> That people are in *need*, are beneficiaries is a fact. Needs can be dressed up as rights, and rights as needs, but, ultimately, success can only be measured by the transformation of peoples’ lives for the better.

## Conclusions

This article has discussed how a rights-based approach has been adopted by a plethora of aid, development and human rights organisations, as well as the UNHCR, and is now a fundamental principle at the heart of policy and practice, including refugee protection. Years of appealing to the conscience of recalcitrant governments, through



articulation of the suffering of people, have failed to improve the lives of many. The language of rights – with its apparent moral certainties and its threat of enforcement against the powerful – is an attractive option for the weary humanitarian. That said, the question remains: is it more empty rhetoric than a basis for meaningful action? The tendency of the last two decades is to place a heavy burden on the power of rights enforcement to engender significant change for the individual, but the reality, as this article has argued, is that talking about rights does not necessarily achieve rights. This is especially true of refugee policy in the Middle East where there will often be limits to persuading hosting states to enforce the full range of rights where their own resources are under pressure and they struggle to realise rights for their own nationals. Indeed, it is possible that too great an emphasis on rights could act to the detriment of asylum seekers and refugees, a scenario that is common for this region and beyond.

Equally, one can also argue that a great deal is also being carried under the banner of ‘protection’. Not only is protection now heavily associated with rights, but many organisations, which, unlike the UNHCR, do not have a protection mandate, are assuming a protection role. For some, this is a dangerous step and not to be encouraged.<sup>101</sup> The word “protection” arguably means much more to the public,<sup>102</sup> and perhaps also to government, than might be intended or achievable. In the Middle East, protection is deemed a “core objective, but what is this “protection”? As with rights, constant usage of the term does not make it materialise. Rather, as I have argued, there is lack of clarity, not helped by the shift between the language of ‘needs’ and ‘rights’ when describing protection, or from emphasis on organisational to community-based protection. In my view, this is patently exemplified in the cases of Iraqi and Syrian displacement where change has been implemented not through protection as rights but through the desire to alleviate suffering and to engender human flourishing.

Sadly, as is well exemplified by the treatment of Iraqi and Syrian refugees, states, both within and without the Middle East, are more than willing to ignore their responsibilities, notional or otherwise, and to pass the buck to the humanitarian actors. In the face of such immense human suffering, as now afflicts the region, this is the time to reinvigorate the international refugee regime, and place humanity and international solidarity, on which refugee protection is founded, truly at its core.<sup>103</sup> But this will only succeed if the meaning, expectations and practice of “protection” are evident to all concerned.

---

<sup>1</sup> Here I employ the international relations understanding of “norms” as ‘a standard for appropriate behavior for actors with a given identity’: Martha Finnemore and Kathryn Sikkink, ‘International norm dynamics and political change (1998) 52(4) *International Organization* 887; Finnemore and Sikkink describe three stages in a norm’s influence: norm emergence, norm cascade and internationalization, *ibid.*, 896. “Norm entrepreneurs” are those actors who ‘attempt to convince a critical mass of states (norm leaders) to embrace new norms’ during the first stage of a norm’s emergence: *Ibid.*: 895; 896-899.

---

<sup>2</sup> *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150, (entered into force 22 April 1954); *Protocol Relating to the Status of Refugees*, 31 January 1967, 606 UNTS 267.

<sup>3</sup> The UNHCR is mandated to conduct refugee status determinations under its Statute – the 1950 Statute of the Office of the UNHCR, 14 December 1950, UNGA Res 428(v) (“the UNHCR Statute”), paras 6A(ii) and 6B.

<sup>4</sup> *Ibid.*: [2]: ‘The work of the High Commissioner shall be ... humanitarian and social ...’.

<sup>5</sup> I have discussed this in more detail elsewhere and build on my analysis here, extending the legal and conceptual to the practical. See Dallal Stevens, ‘What do we mean by protection?’ (2013) 20(1) *International Journal of Minority and Group Rights* 233-262.

<sup>6</sup> See below and the UNHCR Statute, [8] for the original definition of “international protection” to be applied by the UNHCR.

<sup>7</sup> For a history of humanitarianism see Michael Barnett, *Empire of Humanity – A History of Humanitarianism* (Cornell University press, 2011).

<sup>8</sup> Arthur Helton, ‘What is refugee protection? A question revisited’ in Niklaus Steiner, Mark Gibney and Gil Loescher (eds) *Problems of Protection – the UNHCR, Refugees, and Human Rights* (Routledge, 2003): 20.

<sup>9</sup> See, for discussion of the meaning of protection in the Refugee Convention, Andreas Zimmerman and Claudia Mahler, ‘Article 1 A, para. 2’ in Andreas Zimmerman (ed) *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – A Commentary* (OUP, 2011) 444-449; Susan Kneebone and Maria O’Sullivan, ‘Article 1C’ in *ibid.*, 522-530.

<sup>10</sup> Article 1A(2): ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ..., is unable or, owing to such fear, is unwilling to return to it.’ (emphasis added)

<sup>11</sup> See Antonio Fortín, ‘The meaning of “protection” in the refugee definition’ (2001) 12(4) *International Journal of Refugee Law* 548

<sup>12</sup> Andreas Zimmerman and Claudia Mahler, above note 9: 445.

<sup>13</sup> For example: Article 14 ‘Artistic rights and industrial property’; Article 15 ‘Right of association’. Article 12 on ‘Personal status’, Article 17 on ‘Wage-earning employment’, and Article 26 ‘Freedom of movement’ refer to rights in their text.

<sup>14</sup> Arthur Helton, ‘What is refugee protection? A question revisited’ in Niklaus Steiner, Mark Gibney and Gil Loescher (eds) *Problems of Protection – the UNHCR, Refugees, and Human Rights* (Routledge, 2003) 22; see also James Hathaway, *The Rights of Refugees under International Law* (CUP, 2005). One might also add a number of other Treaties: *inter alia*, the 1969 American Convention on Human Rights, the 1981 African Charter on Human and Peoples’ Rights, the 1950 European Convention on Human Rights, the 2000 EU Charter of Fundamental Rights.

<sup>15</sup> For example, see Excom Conclusions on *Temporary Refuge* (No 19 (XXXI) – 1980); *Protection of Asylum-Seekers in Situations of Large-Scale Influx* (No 22 (XXXII) – 1981); and the UNHCR’s current view about generalised violence and armed conflict: Volker Türk, UNHCR, ‘Protection gaps in Europe? Persons fleeing the indiscriminate effects of generalized violence’, 18 January 2011. Available at <<http://www.refworld.org/pdfid/4d37d8402.pdf>>; Vanessa Holzer, *The 1951 Refugee*

---

*Convention and the protection of people fleeing armed conflict and other situations of violence* (UNHCR, Division of International Protection, September 2012).

<sup>16</sup> Excom Conclusions on *Protection of Asylum-Seekers in Situations of Large-Scale Influx* (No 22(XXXII) – 1981).

<sup>17</sup> Excom Conclusions on *International Solidarity and Refugee Protection* (No 52 (XXXIX) – 1988).

<sup>18</sup> An interesting issue is whether the UNHCR has over-compromised. For example, the organisation has been criticised for its undue humanitarianism at the expense of its legal mandate: see Guy Goodwin-Gill, 'Refugee identity and protection's fading prospect' and S. Alex Cunliffe and Michael Pugh, 'UNHCR as leader in humanitarian assistance: a triumph of politics over law?' in Frances Nicholson and Patrick Twomey (eds) *Refugee Rights and Realities: International Concepts and Regimes* (Cambridge University Press, 1999), chs 9 and 11.

<sup>19</sup> UNHCR Statute: [2].

<sup>20</sup> Gil Loescher, *The UNHCR and World Politics* (OUP, 2001), chs 4 and 5; Phil Orchard, *A Right to Flee: Refugees, States, and the Construction of International Cooperation* (CUP, 2014), ch 7.

<sup>21</sup> Ibid. High Commissioner Felix Schnyder stated in 1961 that 'in his opinion the "good offices" concept was elastic enough to permit him, when asked, to bring effective aid to nearly any group of refugees provided there was sufficient interest and support on the part of the international community': Press Release No Ref 638, 1 February 1961, cited in Despatch from the Mission in Geneva to the Department of State, No 311, 6 April 1961. Available at <<https://history.state.gov/historicaldocuments/frus1961-63v25/d311>>.

<sup>22</sup> See Laura Barnett, 'Global governance and the evolution of the international refugee regime' (2002) 14 *International Journal of Refugee Law* 2/3, 238-262; Volker Türk, 'The role of the UNHCR in the development of international refugee law in Frances Nicholson and Patrick Twomey (eds) *Refugee Rights and Realities: International Concepts and Regimes* (Cambridge University Press, 1999), ch 8.

<sup>23</sup> Jeff Crisp, 'Mind the Gap! UNHCR, humanitarian assistance and the development process', *New Issues in Refugee Research*, Working Paper No 43 (UNHCR, May 2001): 7.

<sup>24</sup> Laura Barnett, above note 22: 251.

<sup>25</sup> Most notably in relation to the Rwandan refugees, when the UNHCR was accused of being complicit in forced repatriation of innocent Rwandans by the Tanzanian government in 1996, and during the Yugoslavian war (1991 – 1999), when the UNHCR introduced the concept of "preventative protection" during the Bosnian crisis (1992 – 1995), aimed at limiting the scale of the refugee crisis, but was, instead, accused of stopping the right to seek asylum. The UNHCR has also been accused of departing too far from its original legal mandate for refugees thereby undermining their protection.

<sup>26</sup> UNGA, *Note on International Protection 1994*, A/AC.96/830, 7 September 1994: [32].

<sup>27</sup> Though it should be noted that the Memoranda of Understanding between the UNHCR and state in question might apply a definition of "refugee" that is based on Article 1A(2) of the Refugee Convention and is therefore much more restrictive. Furthermore, any attempt to resettle refugees to Northern states is likely to require a status determination based on Article 1A(2) before resettlement would be entertained.

<sup>28</sup> Above note 26: [11].

---

<sup>29</sup> Ibid.

<sup>30</sup> See above text to notes 16 and 17.

<sup>31</sup> Ibid.: [12].

<sup>32</sup> Ibid. This emphasis on needs correlates with the move towards an increasing humanitarian role adopted by the UNHCR in the 1990s: see for example, Guy Goodwin-Gill, 'Refugee identity and protection's fading prospect' in Frances Nicholson and Patrick Twomey (eds), above note 22, ch 11; and, generally, Gil Loescher, *The UNHCR and World Politics* (OUP, 2001).

<sup>33</sup> *Note on International Protection 1994*, above note 26: [14].

<sup>34</sup> As stated above, international protection 'involves seeking ... to meet the whole range of needs that result from the absence of national protection': [12].

<sup>35</sup> *Note on International Protection 1994*, above note 26: [9].

<sup>36</sup> Note that broader definitions have been adopted where the protection of the "individual" is concerned as opposed to the refugee. See for example the definition of "protection" in Office for the Coordination of Humanitarian Affairs (OCHR), *Glossary of Humanitarian Terms in relation to the Protection of Civilians in Armed Conflict* (New York, 2003): 25: 'A concept that encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of human rights, refugee and international humanitarian law. Protection involves creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution and rehabilitation.' By contrast, the International Committee of the Red Cross (ICRC) has stated that: 'The concept of protection encompasses all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law).' (IASC, *Growing the Sheltering Tree - Protecting Rights through Humanitarian Action* (2002): 11).

<sup>37</sup> UNHCR, *Protecting Refugees – A Field Guide for NGOs* (September 1999). Available at <<http://www.refworld.org/docid/3c03682d4.html>>: 18.

<sup>38</sup> *Reach Out Refugee Protection Training Project*, Handouts on Refugee Protection (2005). Available at <<http://www.unhcr.org/pages/4a16bb8a6.html>>: 39, quoting UNHCR, Department of International Protection, *Designing Protection Strategies and Measuring Progress: Checklist for UNHCR Staff* (2002).

<sup>39</sup> 64th Session of the Executive Committee of the High Commissioner's Programme, Agenda point 5(a), Statement by Volker Türk, Director of International Protection, 3 October 2013. Available at <<http://www.unhcr.org/524d26059.html>>: 1-2.

<sup>40</sup> 65th Session of the Executive Committee of the High Commissioner's Programme, Agenda point 5(a), Statement by Volker Türk, Director of International Protection, 3 October 2014. Available at <<http://www.unhcr.org/542e605d9.html>>: 2.

<sup>41</sup> For example, Shannon Kindornay, James Ron and Charli Carpenter, 'Rights-based approached to development: implications for NGOs' (2012) 34(2) *Human Rights Quarterly* 472-506; Elvira Domínguez Redondo, 'The Millennium Development Goals and the human rights based approach: reflecting on structural chasms with the UN system' (2009) 13(1) *International Journal of Human Rights* 29-43.

<sup>42</sup> UNICEF, *The State of The World's Children 2004*, Annex B, 91; and see *The Human Rights Based Approach to Development Cooperation - Towards a Common Understanding Among the UN Agencies* (Interagency Workshop on a Human Rights-Based Approach in the context of UN reform 3-5 May 2003), available in OHCHR,

---

'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation'. Available at

<<http://www.ohchr.org/Documents/Publications/FAQen.pdf>>: Annex II.

<sup>43</sup> “The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies (‘Common Understanding’)” (outcome document from an Interagency Workshop on a Human Rights based Approach in the context of UN reform 3-5 May 2003): 1.

<sup>44</sup> UNAIDS *Issue Paper: What Constitutes a Rights-based Approach? Definitions, Methods, and Practices*. Available at <[http://data.unaids.org/Topics/Human-Rights/hrissuepaper\\_rbadefinitions\\_en.pdf](http://data.unaids.org/Topics/Human-Rights/hrissuepaper_rbadefinitions_en.pdf)>.

<sup>45</sup> Ibid.

<sup>46</sup> OHCHR, 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation'. Available at

<<http://www.ohchr.org/Documents/Publications/FAQen.pdf>>: 15

<sup>47</sup> Ibid.

<sup>48</sup> The OHCHR describes the concern of human development as being the: ‘realization by all of basic freedoms, such as having the choice to meet bodily requirements or to escape preventable disease. It also includes enabling opportunities, such as those given by schooling, equality guarantees and a functioning justice system.’ Ibid, 7.

<sup>49</sup> UNDP, *Human Development Report 2000: Human Rights and Human Development* (New York, 2000): 19.

<sup>50</sup> Ibid.: 1.

<sup>51</sup> Jakob Kirkemann Boesen and Tomas Martin, *Applying a Rights-Based Approach – An Inspirational Guide for Civil Society* (The Danish Institute for Human Rights, 2007): 15.

<sup>52</sup> *The Human Rights Based Approach to Development Cooperation - Towards a Common Understanding Among the UN Agencies* (Interagency Workshop on a Human Rights-Based Approach in the context of UN reform 3-5 May 2003).

<sup>53</sup> Above note 51: 17.

<sup>54</sup> Ibid, 11.

<sup>55</sup> Ibid.

<sup>56</sup> For example, the Scottish Human Rights Commission and the Australian Human Rights Commission.

<sup>57</sup> UNHCR, *Reach Out: A Refugee Protection Training Project – Handouts on Refugee Protection* (2005): 19. Available at <<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4371d8362&query=rights-basedapproach%20refugees>>.

<sup>58</sup> *Handbook for the Protection of Internally Displaced Persons* (Global Protection Cluster Working Group). Available at <<http://www.unhcr.org/4c2355229.pdf>>: 6.

<sup>59</sup> Ibid.: 11.

<sup>60</sup> Statement by Volker Türk, above note 40: 2.

<sup>61</sup> The 2013 statement by Türk includes a section on ‘Promoting more Government ownership and capacity in asylum/protection systems’, above note 40, 4-5.

<sup>62</sup> Elsewhere, in similar statements, the duty-bearer is described as ‘the State and its agents’.

<sup>63</sup> Available at <<http://www.refworld.org/pdfid/47da54722.pdf>>.

<sup>64</sup> Statement by Volker Türk, above note 40.

- 
- <sup>65</sup> UNHCR, *A Community-Based Approach in UNHCR Operations* (January 2008). Available at <<http://www.efworld.org/pdfif/47da54722.pdf>>: 14.
- <sup>66</sup> Ibid.: 17.
- <sup>67</sup> Ibid.: 16.
- <sup>68</sup> Ibid.: 17. It is also interesting to note the different accounts of needs-approach, rights-based approach and the charity approach that are listed in the DIHR's Guide *Applying a Rights-Based Approach*, above note 52: 10.
- <sup>69</sup> Statement by Volker Türk, above note 40: 7.
- <sup>70</sup> *Applying a Rights-Based Approach*, above note 51: 10.
- <sup>71</sup> Statement by Volker Türk, above note 40: 5.
- <sup>72</sup> There have been numerous critiques of the human rights movement in the humanitarian and development contexts. See for example, David Kennedy, *The Dark Side of Virtue* (Princeton University Press, 2005), ch 1; Andrea Cornwall and Celestine Nyamu-Musembi, 'Putting the "rights-based approach" to development into perspective' (2004) 25(8) *Third World Quarterly* 1415-1437; see also UNAIDS, *Issue Paper: What Constitutes a Rights-based Approach? Definitions, Methods, and Practices*. Available at <[http://data.unaids.org/Topics/Human-Rights/hrissuepaper\\_rbadefinitions\\_en.pdf](http://data.unaids.org/Topics/Human-Rights/hrissuepaper_rbadefinitions_en.pdf)>. A more positive commentary is provided by Paul Gready and Jonathan Ensor (eds) *Reinventing Development? Translating Rights-based Approaches from Theory into Practice* (Zed Books Ltd, 2005).
- <sup>73</sup> See <<http://data.unhcr.org/syrianrefugees/download.php?id=4346>>.
- <sup>74</sup> *2014 Syria Regional Response Plan – Strategic Overview*, Foreword, 4. Available at <<http://www.unhcr.org/syriarrp6/>>.
- <sup>75</sup> Ibid.: Foreword, 5.
- <sup>76</sup> Ibid.: Strategic Overview, 10.
- <sup>77</sup> See above note 51.
- <sup>78</sup> *2014 Syria Regional Response Plan*, above note 74: 17.
- <sup>79</sup> Ibid.
- <sup>80</sup> Ibid, 10, and see also Table of Contents where protection is a sub-heading of Humanitarian needs overview.
- <sup>81</sup> Ibid.: 7.
- <sup>82</sup> Ibid.
- <sup>83</sup> Of particular note is the recent cross-country report by a student team from Boston University School of Law, led by Professor Susan Akram, a renowned refugee lawyer with an expertise on the Middle East and Palestinians: *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Available at: <<http://www.bu.edu/law/central/jd/programs/clinics/international-human-rights/documents/FINALFullReport.pdf>>.
- <sup>84</sup> See for example, Dallah Stevens, 'Legal status, labelling and protection: the case of Iraqi "refugees" in Jordan' (2013) 25(1) *International Journal of Refugee Law* 1-38.
- <sup>85</sup> Law No 24 of 1973 on Residence and Foreigners' Affairs (as amended)(Jordan); Liban: *Loi réglementant l'entrée et le séjour des étrangers au Liban ainsi que leur sortie de ce pays*, 10 July 1962 (Lebanon).
- <sup>86</sup> The issue of the numbers of Palestinians in Jordan is a sensitive one. Some estimates indicate that Palestinians comprise more than half the population of Jordan. Over 1.8 million have been granted Jordanian citizenship and there are more than 2 million registered Palestinian refugees already in Jordan.

---

<sup>87</sup> Human Rights Watch, 'Lebanon: Palestinians barred, Sent to Syria' (6 May 2014); Amnesty International, *Denied refuge – Palestinians from Syria seeking Safety in Lebanon* (2014).

<sup>88</sup> Though not discussed in this article, Egypt has refused to recognise Palestinians as refugees and has been detaining as well as forcibly returning Palestinians to Syria. See for example, Human Rights Watch, *Egypt Don't Force Palestinians back to Syria* (18 January 2013); Patrick Kingsley, 'A Syrian Palestinian refugee in Egypt: 'If I go back to Syria I will die'', *The Guardian*, (Online ed, 14 January 2014). Available at <<http://www.theguardian.com/world/2014/jan/14/syrian-palestinian-refugee-egypt-mahmoud>>.

<sup>89</sup> See for further discussion of the situation regarding Iraqis in Jordan, Dallal Stevens, above note 83.

<sup>90</sup> Taylor Luck, 'For Syrian refugees fleeing violence, Zaatari camp "another hell"', *The Jordan Times*, 23 August 2012; Phoebe Greenwood, 'Rape and domestic violence follow Syrian women into refugee camps', *The Guardian*, 25 July 2013.

<sup>91</sup> UNHCR/IRD, *Syrian refugees living outside camps in Jordan*, 18 March 2014. Available at <<http://www.unhcr.org/urban/>>.

<sup>92</sup> Issam Abdallah, 'Lebanon marks "devastating" milestone with millionth refugee', *Reuters*, (Online ed, 3 April 2014). Available at <<http://www.reuters.com/article/2014/04/03/us-syria-crisis-refugees-idUSBREA320T520140403>>.

<sup>93</sup> 'Lebanese burn down Syrian refugee camp', *Alakhbar English*, (Online ed, 2 December 2013). Available at <<http://english.al-akhbar.com/node/17783>>; and in Turkey: 'Xenophobia against Syrian refugees on rise: Turkish government', *Hurriyet Daily News*, (Online ed, 25 August 2014). Available at <<http://www.hurriyetdailynews.com/xenophobia-against-syrian-refugees-on-rise-turkish-government-.aspx?PageID=238&NID=70857&NewsCatID=341>>.

<sup>94</sup> 'Freezing conditions, forgotten camps – refugees from Syria in Lebanon's Bekaa Valley', *Livewire*, (Online ed, 20 December 2013). Available at <<http://livewire.amnesty.org/2013/12/20/freezing-conditions-forgotten-camps-refugees-from-syria-in-lebanons-bekaa-valley/>>.

<sup>95</sup> UNHCR, 'UNHCR warns of dramatic consequences if funding gaps for Syrian refugees continue', 3 July 2014. Available at <<http://www.unhcr.org/53b518499.html>>.

<sup>96</sup> Though this is culturally acceptable in some areas of Syria, very young girls are being forced to marry in Jordan and Lebanon for fear of rape: Mark Anderson, 'Child marriage soars among Syrian refugees in Jordan', *The Guardian*, (Online ed, 16 July 2014). Available at

<<http://www.theguardian.com/global-development/2014/jul/16/child-marriage-syria-refugees-jordan>>; IRIN, 'Jordan: Early marriage - a coping mechanism for Syrian refugees?', (Online ed, 19 July 2012). Available at <<http://www.irinnews.org/report/95902/jordan-early-marriage-a-coping-mechanism-for-syrian-refugees>>.

<sup>97</sup> *2014 Syria Regional Response Plan*, above note 74, *Jordan Response Plan Overview*, 8-9; *Lebanon Response Plan Overview*, 6-7.

<sup>98</sup> IRIN, Jordan: Increased domestic violence among Iraqi refugees – IOM report, (Online ed, 29 April 2008). Available at <<http://www.irinnews.org/report/77972/jordan-increased-domestic-violence-among-iraqi-refugees-iom-report>>; Karen Leigh, 'Domestic violence on the rise among

---

Syrian refugees', *The New York Times*, (Online ed, 29 August 2014). Available at <[http://kristof.blogs.nytimes.com/2014/08/29/domestic-violence-on-the-rise-among-syrian-refugees/?\\_r=0](http://kristof.blogs.nytimes.com/2014/08/29/domestic-violence-on-the-rise-among-syrian-refugees/?_r=0)>.

<sup>99</sup> However, the meaning of "human dignity" is also a subject for further reflection. See for example, Christopher McCrudden (ed), *Understanding Human Dignity* (OUP, 2014).

<sup>100</sup> See for example, UNHCR, 'UNHCR policy on refugee protection and solutions in urban areas (UNHCR, September 2009) in which rights and needs are combined in a somewhat confusing manner in an attempt to articulate the concept of "protection space"; see also Anne Evans Barnes, 'Realizing protection space for Iraqi refugees: UNHCR in Syria, Jordan and Lebanon', Research Paper No 67 (UNHCR, January 2009); Jeff Crisp *et al*, 'Surviving in the city' A review of UNHCR's operation for Iraqi refugees in urban areas of Jordan, Lebanon and Syria (UNHCR, July 2009). Crisp *et al* define protection space as 'the extent to which there is a conducive environment for the internationally recognized rights of refugees to be respected and upheld.' *ibid*, 4.

<sup>101</sup> See for example Marc Dubois, 'Protection: The New Humanitarian Fig-Leaf'. Available at: <<http://www.rsc.ox.ac.uk/files/publications/other/dp-protection-fig-leaf-2009.pdf>>.

<sup>102</sup> *Ibid*.

<sup>103</sup> "Humanity" is, for me, a call for compassion, humaneness, and empathy to alleviate suffering. For a discussion of humanity, human rights and refugees, see Colin Harvey, 'Is humanity enough? Refugees, asylum seekers and the rights regime' in Satvinder Juss and Colin Harvey (eds), *Contemporary Issues in Refugee Law* (Edward Elgar 2013), ch 3. Harvey discusses 'the interaction between the international legal regime that continues to place great store by the fact of a legally imagined status, and a globalized practice of human rights that underlines the centrality of inclusive guarantees': 68.